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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001961-MR

DONALD EDENS

APPELLANT

v. APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
CIVIL ACTION NO. 00-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2004-CA-002116-MR

DONALD EDENS

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
CIVIL ACTION NO. 00-CR-00023

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, KNOPF, AND MINTON, JUDGES.

MINTON, JUDGE: Donald Edens appeals from a combined order of the Oldham Circuit Court and the Trimble Circuit Court revoking his shock probation. Finding no error, we affirm.

In accordance with the plea agreement and following his guilty plea, Edens was sentenced in the Oldham Circuit Court to a total of fifty years' imprisonment for fifty-one counts of indecent or immoral practices with a child under fifteen. On the same day, following a separate guilty plea, Edens was sentenced in the Trimble Circuit Court to five years' imprisonment for one count of sexual abuse in the first degree. (The circuit judge of the 12th Judicial Circuit presides in both Trimble and Oldham counties.)

Seven months later, the circuit court granted Edens's motion for shock probation in both convictions. Among the conditions of Edens's probation was that he comply with all the conditions of supervision imposed by the Bureau of Corrections, Department of Probation and Parole. And included among the conditions imposed by Probation and Parole was one that prohibited unsupervised contact with any juvenile and allowed supervised contact with juveniles, but only with prior approval by the probation officer of the contact itself and of the adult supervising the contact.

Two and a half years later, the Commonwealth moved to revoke Edens's shock probation based on allegations that he had

had contact with his minor grandchildren without prior approval from his probation officer. The circuit court heard testimony in a revocation hearing, following which the court found that Edens had admitted in his testimony that his grandchildren came to his house once without his prior knowledge or invitation. Edens further admitted that he knew that approval in advance was required but that he thought it would be "okay this one time." Edens also testified that he had had to get prior approval to have a previous Christmas dinner with his family, including his grandchildren. Although Edens testified that he had never been alone with the children, he further admitted that he did not report his grandchildren's surprise visit to his probation officer because he "thought that it would be [all right]."

In a combined order, the court revoked probation on both of Edens's convictions. Edens then filed these appeals, one from each circuit court. We later granted Edens's motion to consolidate the two appeals.

Since probation is a privilege, not a right, a person "may retain his status as a probationer only as long as the trial court is satisfied that he has not violated the terms or conditions of the probation."¹ Given the Commonwealth's strong interest in being able to return a person who violates probation

¹ Tiryung v. Commonwealth, 717 S.W.2d 503, 504 (Ky.App. 1986).

to prison without having to go through another full-blown adversarial, trial-like proceeding,² the procedures for revocation hearings are more flexible than trial proceedings. The Commonwealth is only required to prove that a probationer violated probation by a preponderance of the evidence.³ On appeal, the scope of our review is narrow since we may only determine if the trial court abused its discretion in revoking Edens's probation.⁴

In the case at hand, Edens admitted at his revocation hearing that he visited with his grandchildren without having sought or received the prior approval of his probation officer. Edens does not contend that he was unaware of the fact that he needed prior approval for such visits. In fact, the trial court's order revoking his probation recites the undisputed findings that Edens had previously successfully sought to have Christmas dinner with, among others, his grandchildren; and he had unsuccessfully sought approval to accompany his grandchildren to the doctor. So the record proves that Edens knew that approval by his probation officer was required before contact with children generally, and his own grandchildren particularly. Since it is undisputed that he did visit with his

² See Robinson v. Commonwealth, 86 S.W.3d 54, 56 (Ky.App. 2002).

³ Rasdon v. Commonwealth, 701 S.W.2d 716, 719 (Ky.App. 1986).

⁴ Tiryung, 717 S.W.2d at 504.

grandchildren at least once without having obtained the approval of his probation officer, we find that the Commonwealth presented sufficient evidence to support revocation of Edens's probation.

Next, we reject Edens's argument that the term of his probation forbidding his contact with children without the specific approval of his probation officer is impermissibly vague. To the contrary, we find nothing vague about the requirement that states

You will have no unsupervised contact with juveniles. "**Contact**" means face-to-face, telephonic, correspondence, or any indirect contact via third parties. Any supervised contacts with juveniles must be specifically approved by the Probation and Parole Officer. "**Supervised Contact**" means that any contact with juveniles is to be physically monitored by a designated adult at all times. "**Physically Monitored**" means being present to visually observe all contact. "**Designated Adult**" means a responsible adult who has been approved by the officer. Supervised contact does not include overnight visits or lodging. **This means you will not be alone with any juveniles.**

Obviously, the quoted language from the written special conditions of supervision means that Edens had to get the approval of his probation officer before he had any contact with a juvenile, the contact had to be supervised, and the supervisor had to be approved by the probation officer. Edens obviously also knew the proper meaning of the allegedly vague restrictions

by virtue of the fact that he sought prior consent to have contact with his grandchildren on at least two occasions.

Finally, we reject Edens's misplaced claim that the trial court erred by revoking his probation because he did everything he could to comply with the terms of his probation. Even though his grandchildren's visit was unbidden, Edens points to nothing to show that he took any steps to shorten or minimize his contact with them, such as leaving the house upon their arrival, asking the grandchildren to leave the house, or even voluntarily reporting the visit to his probation officer afterwards. The court's revocation order identifies Edens's "secrecy and covertness" and incapability of "turning away the contact" as cause for concern when dealing with sex offenders whose victims have been children.

For the foregoing reasons, the combined order of the Oldham Circuit Court and the Trimble Circuit revoking Edens's shock probation is affirmed.

ALL CONCUR.

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